

REMARKS

Status of Claims

Claims 4, 15-17, 22, 23, 25-27, 29, 30 and 36-39 are cancelled herein without prejudice or disclaimer. Thus, following the entry of the foregoing claim amendments, claims 1-3, 5-14, 18-21, 24, 28, and 31-34 will be currently pending. Claims 35 and 40 are withdrawn from consideration in view of the Examiner's restriction requirement. Accordingly, no new matter has been added. Applicant reserves the right to pursue the nonelected subject matter in continuation and/or divisional applications.

Restriction Requirement

In the Office Action, the Examiner requires that the claims be restricted to one of the following two groups:

Group I: Claims 1-34, drawn to a cosmetic composition comprising at least one compound; and

Group II: Claims 35-40, drawn to a non-therapeutic process for making up or caring for keratin materials or a process for coating keratin fibers comprising at least one compound.

See October 10, 2007 Office Action at 2.

Applicants elect the subject matter of Group 1, claims 1-3, 5-14, 18-21, 24, 28, and 31-34.

Election of Species Requirement

The Examiner contends that claims 1-10, 21-33, and 35-40 are "generic to the following disclosed patentably distinct species: belonging to **at least one compound.**"

Id. at 2-3 (emphasis in original). Thus, Examiner additionally requires election of a single species of at least one compound from one of the following:

- A. waxes,
- B. polymers or semi-crystalline polymers, and
- C. oils thickened with a structuring agent.

See id.

In response, Applicant elects the single species of polymers or semi-crystalline polymers, and polystearyl acrylate as the single compound.

The Examiner asks for a listing of all claims “readable” on the election of species. *Id.* Applicants note that at least claims 1-3, 5-14, 18-21, 24, 28, and 31-34 are readable thereon.

Further, the Examiner contends that claims 1-40 are generic to the following patentably distinct species: **belonging to film-forming polymer.**” *Id.* at 4 (emphasis in original). Thus, the Examiner requires the election of a single species (i.e., compound) of a film-forming polymer.

Applicant respectfully requests clarification from the Examiner as to why the Examiner categorizes claims 1-40 as generic to film-forming polymers, when only claims 24-27 specifically mention film-forming polymers. However, to be fully responsive, Applicant elects arabic gum as the single film-forming polymer compound. According to the Examiner’s rationale, then claims 1-40 generally read on arabic gum.

If the Examiner chooses to maintain the election of species requirement, Applicant expects the Examiner, if the elected species is found allowable, to continue to

examine the full scope of the pending claims to the extent necessary to determine the patentability of these pending claims, i.e., extending the search to a reasonable number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

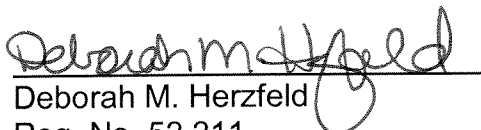
In view of the foregoing amendments and remarks, Applicant respectfully requests the examination of this application, and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, she is respectfully urged to contact Applicant's undersigned counsel at 202-408-4368.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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